

MEMORANDUM

To: Stakeholders and File
Copy: Commissioners
From: Cindy Wilson-Frias and Todd Bianco
Date: August 18, 2022
Re: Docket Nos. 5205 and 5206 Update

PUC Staff would like to thank the participants for a productive meeting on Thursday, August 11, 2022. For reference, the agenda is below. We were able to get through the first two topics and start a discussion of the third topic which raised some foundational questions which will necessitate further discussion in a future meeting.

Agenda:

Topic 1 (Docket No. 5206) Electric Services Bulletin

Quick summary of the Company's responses to data requests on Electric Services Bulletin – do the data responses/Tariff RIPUC No 2244 language (approved August 2021) resolve the previously stated concerns, particularly with respect to the prospective applicability of ESB changes? Docket 5206 - PUC Data Requests 1-2, 1-3, 1-4; PUC Set 2; PUC 5-1, expected to be filed by COB Wednesday (15-20 minutes)

Topic 2 (Docket No. 5206) Review of the cost estimating and final accounting

Formatting (Reference - stakeholder comments received earlier this year, Company's responses to PUC 3-1 and PUC 3-2)

RI Energy Presentation:

- Progression of estimates to actuals
- How DG estimates are created
- Overview of utility accounting (how the Company identifies the costs and the types of costs that are included in the final accounting)
- Q&A

Topic 3 (Docket No. 5205) Contribution in Aid of Construction (CIAC)

Reference - National Grid response to PUC Set 1;

Review of Data Responses Set 3 from Docket No. 5205 – CIAC is a term we use generally but it has been referred to as “Construction Advance” and “System Modification Costs” in other tariffs/policies. The Company identified several areas where customers may have cost responsibility and there may be different terms.

Summary of Status of Topics:

Topic 1 - Electric Services Bulletin

It appears we have settled the issue of the prospective application of the Electric Services Bulletin so that stakeholders and RI Energy have a common understanding that the ESB that is in effect as of the date an application is deemed complete and enters the queue is the governing ESB. A suggestion was made that RI Energy include a notification of the applicable ESB in its

confirmation sent to a customer at the time the application is deemed complete to avoid an automatic hold by a future reviewer in the event an ESB changes during the interconnection process. RI Energy personnel thought this was a good idea that could be easily implemented and would benefit the Company as well as the customer. RI Energy personnel did note that sometimes a project may benefit from implementing changes to the ESB so she expected there would still be a conversation about whether the new ESB should apply. The developers seemed to agree this would be a good idea, but my perception was that the main concern was that an automatic hold not be put on a project when an ESB changes.

Topic 2 – Cost Estimating and Final Accounting

A. Formatting/Presentation of Estimated Costs and Final Accounting

There appeared to be consensus that the presentation of costs consistent with RI Energy's response to PUC DR [Fill In] was something that the developers believe would be useful. RI Energy indicated that because they are relying on National Grid for the tracking and reporting of costs through the Transition Services Agreement, it would take some additional time to effectuate the change in format for the ISA and Final Accounting. RI Energy believed that it could make the formatting change more quickly in the ISA with the Final Accounting take several months. This will be a standing agenda item for RI Energy to provide the group with periodic status updates.

B. Rhode Island Energy Presentation

Rhode Island Energy gave a presentation on the bulleted topics from the agenda. They responded to questions and the group engaged in conversation. Many of the questions were seeking more information on the source and methodologies for assumptions used to create estimates and average costs in actuals. Stakeholders also discussed how to make assumptions and averages, including when changes occur, more transparent. There will be follow-up questions sent based on questions that need additional information. A copy of the presentation can be found here: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-08/5205-5206-RIE-Presentation-Workshop%208-11-22.pdf>.

Topic 3 – CIAC

RI Energy had responded to some data requests on CIAC designed to show the calculations under different scenarios. However, the group was unable to review them during the meeting. RI Energy also responded to a data request on a component of CIAC which is the pass through of taxes. The sole purpose of this data request was to understand whether the tax treatment is the same for load projects and for DG projects.

At the end of the meeting, brief discussion of CIAC occurred. Staff attempted to convey that CIAC/Construction Advance/residential line extension/System Modification Costs, etc. are mechanisms for the allocation of costs between different types of customers for the costs they cause to connect to the system. Thus, these mechanisms are central to the ongoing discussion in

this proceeding. Following the meeting, one participant provided unsolicited comments on various topics, one of which is pertinent to this topic.

Next Steps:

1. Staff concludes the meeting was useful and will proceed in the near-term (at least through the fall) with similar periods of information gathering, workshops, and follow-up.
2. Data requests are being issued contemporaneously with this memorandum to follow up on questions raised at the stakeholder meeting as noted above.
3. A meeting will be scheduled to follow up and answer any outstanding questions from the prior meeting(s), receive updates on action items, and to discuss CIAC with a review of relevant DRs, including the new ones. This will start to identify any issues around the identification of the split between system modification and system improvement; what it means to accelerate; timing issues related to subsequent customer reliance; timing of cost allocation and reimbursement; and various ratemaking considerations.¹
4. During that meeting we will identify principles and identify how the legislation and tariff language might have different interpretations, particularly in the ratemaking context.

Conclusion:

We reiterate that this is not a contested proceeding. The intent of the staff-level stakeholder docket is an attempt to build bridges through information-gathering and dialogue to find consensus, where possible, on matters that are arising now and further, to attempt to provide the same background to all interested stakeholders as matters become ripe for Commission review and interpretation in contested cases. Figuring out how to allocate costs under different scenarios, the timing of such, and the intersection with the ISR and various ratemaking principles is the very thing we have started to work on with information gathering. Ultimately, under the law, the Commission will need to make certain findings on whether a project was accelerated, the timing and amount of cost contributions. Gathering information and working through the possible mechanics outside of a contested case will hopefully be more productive. Having PUC staff at the table will hopefully mitigate problems that have arisen in the past when there has been purported consensus among the utility and stakeholders which either ran contrary to ratemaking principles or which, upon questioning, were not able to be predictably and practically implemented.

¹ Addressing post-meeting comments regarding CIAC in a future stakeholder might obfuscate the issues staff intends to explore with stakeholders. Staff instead attaches a written refresher on the PUC's well-established jurisdiction over CIAC and the issues raised in Docket 4483.

The PUC's Jurisdiction Over CIAC and the Issues Determined in Docket 4483

The assertion was that “this Commission is no longer the venue to discuss federal policy on “contributions in aid of construction.” Two renewable energy developers sought this Commission’s ruling on CIAC and its taxation in a petition filed on January 16, 2014, docket 4483. After just about four years of process, the Commission ultimately disclaimed jurisdiction over CIAC in its Order issued on November 27, 2017.” (Handy Law Comments at 9). This characterization appears to misunderstand the scope of the PUC Order and Supreme Court decision. A review of the PUC Order and Supreme Court decision shows that the PUC never disclaimed jurisdiction over CIAC.

In PUC Order No. 22957, ordering paragraph 8 states, “The Narragansett Electric Company d/b/a National Grid may charge developers that interconnect a distribution facility to the grid for CIAC taxes that The Narragansett Electric Company d/b/a National Grid pays to the IRS for the interconnection facility.” The Order states, “On May 25, 2017, the PUC met to determine whether it is reasonable for National Grid to pass through its tax charges to Petitioners for CIAC taxes paid to the IRS. Commissioners Curran and Gold, relying upon the written Ernst & Young opinion, and while noting that they do not sit as tax attorneys or tax experts, voted that the pass-through tax charges were reasonable in this proceeding.” Order at 21. Nothing in this Order disclaimed jurisdiction over the calculation of CIAC or over the application of CIAC to customers’ projects. The Rhode Island Supreme Court affirmed the PUC’s Order in *ACP Land, LLC v. R.I. Pub. Utilities Comm’n*, 228 A.3d 328 (R.I. 2000). In its Order, while expressing its “ferveant hope” that the IRS provide additional clarity on the topic, the Supreme Court stated, “And as it stands, in our judgment, NG is entirely reasonable in believing that it continues to owe the interconnection tax at issue in this case to the IRS and in, therefore, passing that tax on to petitioners. Accordingly, we are unable to perceive any error on the part of the PUC in this case.” *Id.* at 338.

To be clear, contributions in aid of construction/Construction Advance/residential line extension/System Modification Costs, etc., are squarely within the Commission’s jurisdiction. These are mechanisms for the allocation of costs between different types of customers for the costs they cause to connect to the system. This is a foundational concept that should be understood if there is going to be progress on the issues identified in recent ISR data responses, during the ISR technical session in June 2022, and further explored in Docket No. 5206 through PUC DRs Sets 4 and 5.